IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 5210 OF 1991

Shri Shrikisan Surajmal Jaju,
(deceased) by his L/Rs.

(A) Smt. Vijaya Shrikisan Jaju,
Occupation- business.

(B) Nitin Shrikisan Jaju,
Occupation- business.

(C) Bipin Shrikisan Jaju,
Occupation-education.

(D) Miss. Binita Shrikisan Jaju,
Occupation- education.
Minor through guardian mother
"A" Smt. Vijaya S. Jaju-
At present all residing at .. Petitioner
1426 -C, Laxmipura, (Orig. Plff-
Kolhapur- 416002. Landlord.)

V/s.

Shri Kesarinath Hareshwar Chaudhari,
Occupation Business,
Residing at 47-5, Prabhat Road, ..Respondent
Pune - 411004. (orig.deft.-
tenant)

Mr. V.G. Peshve for the petitioners.

Mr. R.M. Pathe i/b Mr. B.R. Pathak for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 27TH JUNE, 2005.

ORAL JUDGMENT

. The petitioners landlords own the house admeasuring 10 X 12 feet , situated on the ground floor

of House NO. 346, Budhwar Peth, Pune-2, which has been used as a garage by the respondent-tenant. The petition was filed before the Small Causes Court, at Pune for possession of the suit premises. The ground was agitated about the closure of the premises for more than six months without any reasons. The trial Court after considering the material, as well as, the evidence led by the parties, dismissed the suit and the same has been confirmed by the appellate Court by its order dated 30/3/1991. Therefore, the present writ petition by the original landlords.

2. Heard the learned Counsel appearing for the parties. I have gone through the reasoning given by the Courts below, with the assistance of the learned Counsel appearing for the parties. Knowing fully the purpose and object of the Article 227 of the Constitution of India, it is difficult to interfere with the concurrent finding given by the Courts on all the grounds. After going through the record, there is nothing perverse or illegal as such pointed out or even born out from the record. In view of this, I am maintaining and confirming the order passed by the Courts below, also on the following reasons.

3. The suit premises admittedly is situated on the ground floor has been using for the garage, by the tenant. The requirement of the landlords to use the premises for his residential purpose held to be not reasonable and bonafide. There is a material on the record to show that the premises in question is in dilapidated condition. There are no amenities or facilities available to use the premises in question for the residential purpose. Therefore, unless supported and backed by the material, in the facts and circumstances of the case, rightly held by the Courts below, that such premises cannot be used for the residential purpose. The bonafide need of landlord to occupy the said premiss for the residential purposes in the circumstances is difficult to accept.

4. The question of a comparative hardship or greater hardship in this background need no further discussion. The question of hardship comes only, if there is a possibility or availability of the ground for the bonafide need in favour of the landlord and not otherwise.

5. As already noted by the Courts blow, there is no material on the record to justify the non use and/or locked premises for continuous period of 6 months as contemplated under 13(1)(l) of the Bombay Rent Act. The Court Commissioner’s report placed on the record further supports the same as they found articles belonging to the defendant-tenant lying in the suit premises along with the Scooter.

6. In view of the concurrent fining of fact arrived at by the Courts below, I am also of the view that the reasoning as given based upon the material evidence on the record, is plausible and reasonable. Therefore, the present petition is dismissed. Rule discharged. No order as to cost.

[ANOOP V. MOHTA, J.]